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Ace Electric and Plumbing, Inc. and Shade Tree Electric of Arkansas, Inc., a single employer and Plumbers Local Union No. 68, AFL-CIO a/w United Association of Journeymen and Apprentices of the Plumbing and Pipefitting Industry of the United States and Canada, AFL-CIO. Case 16-CA-22807

November 30, 2004

SUPPLEMENTAL DECISION AND ORDER

BY CHAIRMAN BATTISTA AND MEMBERS LIEBMAN
AND SCHAUMBER

The General Counsel seeks a default judgment in this case on the ground that the Respondent has failed to file an answer to the compliance specification.

On October 28, 2003, the National Labor Relations Board issued an Order¹ that, among other things, ordered the Respondent to make whole employees for any losses they may have suffered as a result of the Respondent's failure to adhere to its 2002—2003 collective-bargaining agreement with the Union, until it expired on September 30, 2003. On May 4, 2004, the United States Court of Appeals for the Fifth Circuit issued its judgment enforcing in full the Board's Order.²

A controversy having arisen over the amount of backpay due the unit employees, on August 31, 2004, the Regional Director issued a compliance specification and notice of hearing alleging the amounts due under the Board's Order. The compliance specification notified the Respondent that it should file a timely answer complying with the Board's Rules and Regulations. Although properly served with a copy of the compliance specification, the Respondent failed to file an answer.

On October 4, 2004, the Respondent's counsel, by telephone, informed a representative of Region 16 that the Respondent would not file an answer to the compliance specification. On the same date, a representative of Region 16, by telephone, advised the Respondent's counsel that a motion for default judgment would be filed if the Respondent failed to file an answer. Further, by letter dated October 11, 2004, the Respondent's counsel informed counsel for the General Counsel that the Respondent would not file an answer.

¹ The unpublished Order adopted, in the absence of exceptions, the decision of Administrative Law Judge Lawrence W. Cullen, which issued on September 9, 2003 (JD(ATL)-61-03).

² 04-60094.

On October 18, 2004, the General Counsel filed with the Board a Motion for Default Judgment, with exhibits attached. On October 21, 2004, the Board issued an order transferring the proceeding to the Board and a Notice to Show Cause why the motion should not be granted. The Respondent filed no response. The allegations in the motion and in the compliance specification are therefore undisputed.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

Ruling on the Motion for Default Judgment

Section 102.56(a) of the Board's Rules and Regulations provides that a respondent shall file an answer within 21 days from service of a compliance specification. Section 102.56(c) provides that if the respondent fails to file an answer to the specification within the time prescribed by this section, the Board may, either with or without taking evidence in support of the allegations of the specification and without further notice to the respondent, find the specification to be true and enter such order as may be appropriate.

According to the uncontroverted allegations of the motion for default judgment, the Respondent, despite having been advised of the filing requirements, has failed to file an answer to the compliance specification. In the absence of good cause for the Respondent's failure to file an answer, we deem the allegations in the compliance specification to be admitted as true, and grant the General Counsel's Motion for Default Judgment. Accordingly, we conclude that the amounts of backpay due the unit employees and discriminatees are as stated in Appendices C and J of the compliance specification, and we will order the Respondent to pay those amounts, plus interest accrued to the date of payment. In addition, we conclude that the contractual fringe benefit funds payments owed by the Respondent are as stated in Appendices E and K of the compliance specification, and we will order the Respondent to pay those amounts to the funds on behalf of the unit employees and the discriminatees.

ORDER

The National Labor Relations Board orders that the Respondent, Ace Electric and Plumbing, Inc. and Shade Tree Electric of Arkansas, Inc., a Single Employer, Greenville, Texas, its officers, agents, successors, and assigns, shall make whole the individuals named in the attached Appendices A and B, by paying them the amounts of backpay opposite their names, plus interest accrued to the date of payment, as prescribed in *New Horizons for the Retarded*, 283 NLRB 1173 (1987), minus tax withholdings required by Federal and State laws. The Respondent also shall make whole those individuals

for payments due the contractual fringe benefit funds by paying the amounts set forth in the attached Appendices C and D, plus the interest specified in the collective-bargaining agreement for delinquent contributions.

In summary, the amounts owed by the Respondent are as follows:

BACKPAY:	\$98,491.24
FRINGE BENEFIT PAYMENTS:	\$63,509.68
TOTAL:	\$162,000.92

Dated, Washington, D.C. November 30, 2004

Robert J. Battista,	Chairman
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Wilma B. Liebman,	Member
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Peter C. Schaumber,	Member
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(SEAL) NATIONAL LABOR RELATIONS BOARD

ACE ELECTRIC & PLUMBING, INC.

Ace Electric and
Plumbing, Inc. and
Shade Tree Electric
of Arkansas, Inc.,
a Single Employer

APPENDIX A

Case No. 16–
CA–22807

LAST	FIRST	PAY RATE	REG HRS	REG PAY	OT HRS	OT PAY	TOTAL	U SCALE	REG U	C
ACUFF	HEATH	\$11.00	258	\$ 2838.00	69	\$ 1138.50	\$ 3976.50	\$ 12.01	\$ 3098.58	\$ 1
BAIN	JOEL	14.00	600	8400.00	178	3738.00	12,138.00	15.44	9264.00	4
BLASINGAME	PAUL	25.00	760	19,000.00	0		19,000.00	24.13	18,338.80	
CRUZ	JORGE	10.00	520	5200.00	238	3570.00	8,770.00	12.01	6245.20	4
EVANS	JEFFREY	10.50	40	420.00	17	267.75	687.75	12.01	480.40	
EVANS	JEFFREY	11.50	380	4370.00	90	1552.50	5922.50	12.01	4563.80	1
GALVAN	JESUS	8.50	180	1530.00	23	293.25	1823.25	12.01	2161.80	
GARCIA	NICANOR	13.00	40	520.00	5	97.50	617.50	15.44	617.60	
GARCIA	NICANOR	14.00	80	1080.00	13	265.50	1345.50	15.44	1235.20	
GARZA	ANDRES	12.00	480	5760.00	210	3780.00	9540.00	15.44	7411.20	4
GREEN	EARNEST	11.00	474	5214.00	103	1699.50	6913.50	12.01	5692.74	1
GUTIERREZ	VICTOR	17.00	720	12,240.00	237	6043.50	18,283.50	24.13	17,373.60	8
HERNANDEZ	FELIZ	9.00	264	2376.00	62	837.00	3213.00	12.01	3170.64	1
MEJIA	CARLOS	10.00	760	7600.00	324	4860.00	12,460.00	12.01	9127.60	5
MOLINA	MARTIN	15.00	160	2400.00	58	1305.00	3705.00	16.56	2649.60	1
OBRYAN	WILLIAM	10.00	744	7440.00	186.50	2797.50	10,237.50	12.01	8935.44	3
OCAMPO	ARIEL	7.50	424	3180.00	58	652.50	3832.50	12.01	5092.24	1
PRESSLEY	CHRISTOPHER	16.50	502	8283.00	119	2945.25	11,228.25	24.13	12,113.26	4
REDDELL	HARVEY	10.00	40	400.00	8	120.00	520.00	12.01	480.40	
SMITH	CLIFF	9.00	76	684.00	20	270.00	954.00	12.01	912.76	
SMITH	TERRY	13.00	750	9750.00	229	4465.50	14,215.50	15.44	11,580.00	5
SOLIS	JULIAN	10.00	80	800.00	22	330.00	1130.00	12.01	960.80	
THOMPSON	RICKEY	12.00	269	3228.00	94.5	1701.00	4929.00	15.44	4153.36	2
THRIFT	MICHAEL	10.00	110	1100.00	52	780.00	1880.00	12.01	1321.10	
VAQUERA	SEBASTIAN	15.00	436	6540.00	72	1620.00	8160.00	24.13	10,520.68	2
VILLAREAL	JUAN	15.50	80	1240.00	20	465.00	1705.00	24.13	1930.40	
VILLAREAL	JUAN	16.50	680	11,220.00	308	7623.00	18,843.00	24.13	16,408.40	11
VILLAREAL	LAURO	10.00	720	7200.00	201	3015.00	10,215.00	12.01	8647.20	3
TOTAL			10,627	\$140,013.00	3017	\$56,232.75	\$196,245.75	\$434.13	\$174,486.80	\$72,

APPENDIX B
BACKPAY CALCULATION SUMMARY

CASE NAME: Ace Electric 0
CASE NUMBER: 16-CA-20807 0

Claimant	Gross Backpay	Interim Earn-ings	Interim Ex-penses	Net Interim Earnings	Net Backpay
anderson	1,273.06	0.00	0.00	0.00	1,273.06
crawford	10,532.77	168.14	0.00	168.14	10,364.63
emmel	4,341.62	3,385.22	0.00	3,385.22	956.40
eve	1,357.13	0.00	0.00	0.00	1,357.13
fgarza	13,126.72	6,168.60	0.00	6,168.60	6,958.12
montejano	12,268.22	0.00	0.00	0.00	12,268.22
rangel	2,257.88	1,201.00	0.00	1,201.00	1,056.88
rocha	4,090.32	0.00	0.00	0.00	4,090.32
rosier	6,137.11	3,212.67	0.00	3,212.67	2,924.44
whitaker	6,341.98	2,161.60	0.00	2,161.60	4,180.38
winn	2,576.15	0.00	0.00	0.00	2,576.15
Total:	\$64,302.96	\$16,297.23	\$0.00	\$16,297.23	\$48,005.73

Ace Electric
and Plumbing,
Inc. and
Shade Tree
Electric of Ar-
kansas, Inc.,
A Single Em-
ployer

APPENDIX C

Fringe Benefit Payments

Case No. 16-
CA-20807

LAST	FIRST	PAY RATE	REG HRS	OT HRS	Insurance	Local Pension	Natl. Pension	Appren Train	IND. Fund	INTL TRNG FUND
Acuff	Heath	\$ 11.00	258	69	\$ 833.85			\$ 114.45		
Bain	Joel	\$ 14.00	600	178	\$ 1,983.90			\$ 272.30	\$ 46.68	\$ 38.90
Blasingame	Paul	\$ 25.00	760	0	\$ 1,938.00	\$ 684.00	\$ 1,710.00	\$ 266.00	\$ 45.60	\$ 38.00
Cruz	Jorge	\$ 10.00	520	238	\$ 1,932.90			\$ 265.30		
Evans	Jeffrey	\$ 10.50	40	17	\$ 145.35			\$ 19.95	\$	
Evans	Jeffrey	\$ 11.50	380	90	\$ 1,198.50			\$ 164.50		
Galvan	Jesus	\$ 8.50	180	23	\$ 517.65			\$ 71.05		
Garcia	Nicanor	\$ 13.00	40	5	\$ 114.75			\$ 15.75	\$ 2.70	\$ 2.25
Garcia	Nicanor	\$ 14.00	80	13	\$ 237.15			\$ 32.55	\$ 5.58	\$ 4.65
Garza	Andres	\$ 12.00	480	210	\$ 1,759.50			\$ 241.50	\$ 41.40	\$ 34.50
Green	Earnest	\$ 11.00	474	103	\$ 1,471.35			\$ 201.95		
Gutierrez	Victor	\$ 17.00	720	237	\$ 2,440.35	\$ 861.30	\$ 2,153.25	\$ 334.95	\$ 57.42	\$ 47.85
Hernandez	Feliz	\$ 9.00	264	62	\$ 831.30			\$ 114.10		
Mejia	Carlos	\$ 10.00	760	324	\$ 2,764.20			\$ 379.40		
Molina	Martin	\$ 15.00	160	58	\$ 555.90	\$ 196.20	\$ 490.50	\$ 76.30	\$ 13.08	\$ 10.90
Obryan	William	\$ 10.00	744	186.5	\$ 2,372.78		\$ -	\$ 325.68		
Ocampo	Ariel	\$ 7.50	424	58	\$ 1,229.10			\$ 168.70		
Pressley	Christopher	\$ 16.50	502	119	\$ 1,583.55	\$ 558.90	\$ 1,397.25	\$ 217.35	\$ 37.26	\$ 31.05
Reddell	Harvey	\$ 10.00	40	8	\$ 122.40			\$ 16.80		
Smith	Cliff	\$ 9.00	76	20	\$ 244.80			\$ 33.60		
Smith	Terry	\$ 13.00	750	229	\$ 2,496.45			\$ 342.65	\$ 58.74	\$ 48.95
Solis	Julian	\$ 10.00	80	22	\$			\$		

APPENDIX B

					260.10			35.70		
Thompson	Rickey	\$ 12.00	269	94.5	\$ 926.93			\$ 127.23	\$ 21.81	\$ 18.18
Thrift	Michael	\$ 10.00	110	52	\$ 413.10			\$ 56.70		
Vaquera	Sebastian	\$ 15.00	436	72	\$ 1,295.40	\$ 457.20	\$ 1,143.00	\$ 177.80	\$ 30.48	\$ 25.40
Villareal	Juan	\$ 15.50	80	20	\$ 255.00	\$ 90.00	\$ 225.00	\$ 35.00	\$ 6.00	\$ 5.00
Villareal	Juan	\$ 16.50	680	308	\$ 2,519.40	\$ 889.20	\$ 2,223.00	\$ 345.80	\$ 59.28	\$ 49.40
Villareal	Lauro	\$ 10.00	720	201	\$ 2,348.55			\$ 322.35		
TOTAL					\$34,792.20	\$3,736.80	\$ 9,342.00	\$ 4,775.40	\$ 426.03	\$ 355.03

TOTAL FRINGES \$53,427.46

Ace Electric and Plumbing, Inc. and
Shade Tree Electric of Arkansas, Inc.,
A Single Employer

APPENDIX D

Fringe Benefit Payments
Union Referrals

Case No. 16-CA-20807

LAST	FIRST	PAY RATE	ER REG HRS	UNION REG HRS	ER OT HRS	UNION OT HRS	TOTAL HRS OWED	INSURANCE	LOCAL PENSION	NATL. PENSION	APPR TRA
Anderson	Gary	\$ 12.01	76	0	20	0	96	\$ 244.80	\$ -	\$ -	\$ 33
Crawford	Jon	\$ 12.01	520	14	238	0	744	\$ 1,897.20	\$ -	\$ -	\$ 260
Emmel	James	\$ 15.44	258	190	69	19.5	117.5	\$ 299.63	\$ -	\$ -	\$ 41
Eve	David	\$ 12.01	80	0	22	0	102	\$ 260.10	\$ -	\$ -	\$ 35
Garza	Fernando	\$ 16.56	436	371	72	1	136	\$ 346.80	\$ 122.40	\$ 272.00	\$ 47
Montejano	Humberto	\$ 12.01	753.5	0	201	0	954.5	\$ 2,433.98	\$ -	\$ -	\$ 334
Rangel	Adrian	\$ 12.01	110	100	52	0	62	\$ 158.10	\$ -	\$ -	\$ 21
Rocha	Louis	\$ 16.56	160	0	58	0	218	\$ 555.90	\$ 196.20	\$ 436.00	\$ 76
Rosier	David	\$ 12.01	424	263	58	3	216	\$ 550.80	\$ -	\$ -	\$ 75
Whitaker	Beau	\$ 15.44	269	140	94.5	0	223.5	\$ 569.93	\$ -	\$ -	\$ 78
Winn	John	\$ 12.01	180	0	23	0	203	\$ 517.65	\$ -	\$ -	\$ 71
TOTAL								\$ 7,834.88	\$ 318.60	\$ 708.00	\$1,075

TOTAL FRINGES \$10,082.22